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# Supreme Court of the United States

OCTOBER TERM, 1956

No. 1038

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SUPREME COURT

THE UNITED STATES, PETITIONER,

versus

HOWARD A. McNINCH, d/b/a THE HOME COMFORT CO., ROSALIE McNINCH AND GARIS P. ZEIGLER, FREDERICK L. TOEPLEMAN, AND CATO BROS., INC., WILFRED R. CATO, WILLIAM R. CATO, AND MAGGIE L. DUNN (NEE: MAGGIE L. STONE), RESPONDENTS.

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

EDWIN P. GARDNER,  
P. H. NELSON,  
EDWARD W. MULLINS,  
Columbia, S. C.,

Attorneys for Respondents,

Howard A. McNinch, Rosalie McNinch and Garis P. Zeigler.

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## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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### STATEMENT

The respondents, Howard A. McNinch, d/b/a The Home Comfort Co., Rosalie McNinch and Garis P. Zeigler (Respondents in the *McNinch* case), have no objection to the Court granting the petition with respect to either Questions 1 or 2, as set forth on page 2 of the petition.

It is respectfully submitted, however, that this Honorable Court should not allow the petitioner "to reserve the right to brief and argue, with respect to the *McNinch* por-

tion of the case; the additional question whether a fraudulent claim for a government guarantee of an FHA home improvement loan constitutes a 'claim against the United States', under the civil False Claims Act, prior to default on the loan and indemnification of the lender by FHA.<sup>1</sup>

## ARGUMENT

In the first place the petitioner has failed to set forth in the petition any reason why the Government should be given the right to brief and argue this additional question, and hence these respondents have no way to adequately present an argument in opposition thereto.

Furthermore, the very question which the Government is now attempting to reserve the right to argue has been squarely decided contrary to the Government's contention in *United States v. Tieger*, 234 F. (2d) 589 (C. A. 3), certiorari denied, 352 U. S. 941, and *United States v. Cochran*, 235 F. (2d) 131 (C. A. 6), certiorari denied, 352 U. S. 941.

Since the decision in the *Tieger* and *Cochran* cases the Court of Appeals for the Fourth Circuit has reached the same conclusion in this case.

Since all of the Courts of Appeal to which the question has been presented have resolved it contrary to the Government's contention we see no basis for granting the Government the right to again reargue this question, should the Court conclude to grant the petition for certiorari in the present cases.

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<sup>1</sup> See Footnote 2, on page 2 of the Petition for Certiorari.

## CONCLUSION

For the reasons herein set forth it is respectfully submitted that the Government's attempt to reserve the right to brief and argue, with respect to the *McNinch case*, the additional question set forth in Footnote 2, on page 2, of the Petition for Certiorari, should be denied.

Respectfully submitted,

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Attorneys for Respondents,

Howard A. McNinch, Rosalie McNinch and Garis P. Zeigler.